

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES C. SPIELMAN AKA CHRIS	:	
SPIELMAN, ON BEHALF OF HIMSELF AND	:	
ALL OTHERS SIMILARLY SITUATED,	:	CASE No. 2:17-CV-612
	:	
PLAINTIFFS,	:	JUDGE MICHAEL H. WATSON
	:	
VS.	:	MAGISTRATE JUDGE KIMBERLY A. JOLSON
	:	
IMG COLLEGE, LLC, <i>ET AL.</i> ,	:	
	:	
DEFENDANTS.	:	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE A SECOND
AMENDED COMPLAINT INSTANTER**

Pursuant to Federal Rule of Civil Procedure 15(a) and (d), Plaintiff Charles C. Spielman, on behalf of himself and all others similarly situated (“Mr. Spielman”), respectfully requests leave of Court to file his *Second Amended Complaint Instanter*, as new facts have occurred and been discovered since the filing of the first amended pleading which affect the controversy and the relief sought therein, and will also result in the addition of new parties and the dismissal of another party. Additional support for this amendment to Mr. Spielman’s Complaint is set forth in the attached Memo in Support. Furthermore, Mr. Spielman states that the filing of this Motion is not for the purpose of delay, but to protect Mr. Spielman’s rights and those of the putative class, and the same will not prejudice any party with respect to this action.

For the foregoing reasons, and those set forth in the attached Memo in Support, Mr. Spielman respectfully requests that the Court grant him leave to plead his *Second*

Amended Complaint. (See Mr. Spielman's Second Amended Complaint, attached hereto as Exhibit 1). A proposed order is also attached for the Court's convenience. (See Proposed Order Granting Motion for Leave, attached hereto as Exhibit 2).

Respectfully submitted,

/s/ Brian K. Duncan

Brian K. Duncan (0080751)
Anthony McGeorge (0093475)
Bryan D. Thomas, *Of Counsel* (0084659)
BKD LEGAL, LLC
119 East Granville Street
Sunbury, Ohio 43074
Phone: (740) 965-1347
Fax: (614) 386-0410
Email: bduncan@bkdlegal.com
Email: amcgeorge@bkdlegal.com
Email: bthomas@bryanthomaslaw.com

Trial Counsel for Plaintiff

/s/ Samir B. Dahman

Samir B. Dahman (0082647)
Alexis V. Preskar (0095619)
KOHRMAN JACKSON & KRANTZ LLP
10 West Broad Street, Suite 1900
Columbus, Ohio 43215
Tel: 614.427.5750
Fax: 216.621.6536
Email: sbd@kjk.com; avp@kjk.com

Co-Counsel for Plaintiffs

/s/ Gregory P. Barwell

WESP BARWELL, L.L.C.
Gregory P. Barwell (0070545)
Attorneys at Law
100 E. Broad Street, Suite 2350
Columbus, Ohio 43215
P+F: (614) 456-0488
Email: gbarwell@wesplaw.com

Co-Counsel for Plaintiff

MEMO IN SUPPORT

A party may supplement or amend its pleadings, with leave of the Court pursuant to the guidelines set forth in Rule 15(a) of the Federal Rules of Civil Procedure. As set forth in Rule 15(a), where a response to a complaint has been filed, the plaintiff may amend the complaint only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Here, Mr. Spielman has sought the consent of the remaining adverse party IMG, but IMG has refused consent.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that, when a party must seek leave of court to amend a pleading, “[t]he court should freely give leave when justice so requires.” This rule, which allows a liberal policy in favor of granting amendments, “reinforce[s] the principle that cases ‘should be tried on their merits rather than the technicalities of pleadings.’” *Inge v. Rock Fin. Corp.*, 388 F.3d 930, 936 (6th Cir. 2004) (quoting *Moore v. City of Paducah*, 790 F.2d 557, 559 (6th Cir. 1986)). Thus, the trial court enjoys broad discretion in deciding motions for leave to amend. See *Gen. Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990). In exercising its discretion, the trial court may consider such factors as “undue delay, bad faith or dilatory motive on the part of a movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment.” *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

Doe v. Denison Univ., No. 2:16-cv-143, 2016 U.S. Dist. LEXIS 74136 (S.D. Ohio June 7, 2016)(Jolson, M.J.) (granting motion for leave to file amended complaint).

Further, under Rule 15(d), a party may file supplemental pleadings “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d) (*emphasis*

added).

As other courts in this Circuit have recognized:

“The purpose of a supplemental pleading is to set forth new facts that have occurred since the filing of the original pleading and that affect the controversy and the relief sought. Its function is to bring the action ‘up to date.’” *Weisbord v. Michigan State University*, 495 F. Supp. 1347, 1350-51 (W.D. Mich. 1980). Thus, a supplemental pleading may include new facts, new claims, new defenses, and new parties. *Stewart [v. Shelby Tissue, Inc.]* 189 F.R.D. 357, 361 [(W.D. Tenn. 1999)]. “Supplemental pleadings may be used to bring in additional parties when the subsequent events alleged in the new pleadings make it necessary.” *Id. citing Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 226-27, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964)).

Charter Oak Fire Ins. Co. v. SSR, Inc., E.D.Ky. No. 11-cv-118, 2015 U.S. Dist. LEXIS 178209, at *7-8 (Jul. 13, 2015).

Mr. Spielman wishes to amend his Complaint to name additional necessary defendants, including IMG Communications, Inc., a Kentucky corporation, d/b/a IMG College, Nike USA, Inc., Nike, Inc., Endeavor LLC, and John Does 1-10. Additionally, Mr. Spielman’s Second Amended Complaint shall include any and all of the aforementioned parties’ licensees, and/or co-conspirators while also dismissing the Ohio State University as a Defendant.

Further, Mr. Spielman’s Amended Complaint will broaden the prospective class to include all current and former student-athletes residing in the United States who compete on, or competed on, any football program within the NCAA Division I Football Bowl Subdivision (FBS), formerly known as Division I-A of the NCAA, for any school, college, or university which has or had a licensing or marketing contract with IMG College, LLC or its affiliates. This prospective class would include all current and

former student-athletes within the past ten (10) years immediately preceding this action who have or may have had their images, likenesses and/or names included, or which could have been included (by virtue of their appearance on a team roster), in marketing campaigns licensed or sold by IMG and new Defendants Nike USA, Inc., Nike, Inc., Endeavor LLC, John Does 1-10, their licensees, and/or through any and all co-conspirators.

These amendments to Mr. Spielman's Complaint are necessary because of the contracts between Defendant IMG and the Ohio State University. The contracts are titled "University Multi-Media Rights Agreement" (the "Contract"); which Mr. Spielman only received from counsel for the Ohio State University on November 14, 2017. The Contract, which is attached to Mr. Spielman's Second Amended Complaint as Exhibit A, supports the basis for the relief requested herein, and the rationale for the same is set forth in greater detail in the Second Amended Complaint.

Upon information and belief, IMG and new Defendants Nike USA Inc., Nike, Inc., Endeavor LLC, John Does 1-10, their licensees, and/or any and all co-conspirators have or have had similar contracts, marketing agreements, and/or licenses with other FBS schools, colleges, and universities. These similar contracts, marketing agreements, and/or licenses with other schools, colleges and universities may have foreclosed prospective class members from receiving compensation in connection with the commercial exploitation of their names, images, and likenesses following their intercollegiate athletic competition careers.

In light of the broadened prospective class, the receipt of the Contract, new

defendants, the removal of the Ohio State in his proposed Second Amended Complaint, and because justice so requires, Mr. Spielman respectfully submits that leave should be granted in accordance with Rule 15 in order for him to amend and supplement his First Amended Complaint. Accordingly, Mr. Spielman respectfully moves this Court for an Order granting Plaintiff leave to file his Second Amended Complaint *Instantly*.

Finally, Mr. Spielman states that the filing of this Motion is not for the purpose of delay, but to protect Plaintiff's rights and that the granting of this Motion will not prejudice any party to this action. A proposed order is attached for the Court's convenience.

Respectfully submitted,

/s/ Brian K. Duncan

Brian K. Duncan (0080751)
Anthony McGeorge (0093475)
Bryan D. Thomas, *Of Counsel* (0084659)
BKD LEGAL, LLC
119 East Granville Street
Sunbury, Ohio 43074
Phone: (740) 965-1347
Fax: (614) 386-0410
Email: bduncan@bkdlegal.com
Email: amcgeorge@bkdlegal.com
Email: bthomas@bryanthomaslaw.com
Trial Counsel for Plaintiff

/s/ Gregory P. Barwell

WESP BARWELL, L.L.C.
Gregory P. Barwell (0070545)
Attorneys at Law
100 E. Broad Street, Suite 2350
Columbus, Ohio 43215
P+F: (614) 456-0488
Email: gbarwell@wesplaw.com
Co-Counsel for Plaintiff

/s/ Samir B. Dahman

Samir B. Dahman (0082647)
Alexis V. Preskar (0095619)
KOHRMAN JACKSON & KRANTZ LLP
10 West Broad Street, Suite 1900
Columbus, Ohio 43215
Tel: 614.427.5750

Fax: 216.621.6536

Email: sbd@kjk.com; avp@kjk.com

Co-Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b)(3) of the Federal Rules of Civil Procedure, I hereby certify that on November 28, 2017, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Brian K. Duncan

Brian K. Duncan (0080751)